

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 35386

STATE OF IDAHO,)	2009 Unpublished Opinion No. 567
)	
Plaintiff-Respondent,)	Filed: August 11, 2009
)	
v.)	Stephen W. Kenyon, Clerk
)	
LENA LYNNETTE KETTLE,)	THIS IS AN UNPUBLISHED
)	OPINION AND SHALL NOT
Defendant-Appellant.)	BE CITED AS AUTHORITY
)	

Appeal from the District Court of the Fourth Judicial District, State of Idaho, Ada County. Hon. Michael E. Wetherell, District Judge.

Judgment of conviction for aggravated battery, affirmed.

Molly J. Huskey, State Appellate Public Defender; Elizabeth A. Allred, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Lori A. Fleming, Deputy Attorney General, Boise, for respondent.

LANSING, Chief Judge

The appellant, Lena Lynnette Kettle, was found guilty of aggravated battery following a jury trial. She appeals from her judgment of conviction, contending that the evidence admitted at trial was insufficient to support the jury's verdict. We affirm.

I.

BACKGROUND

On November 10, 2006, Kettle and Dana Deines were traveling in a vehicle when they began arguing. According to Deines's testimony, Kettle then began to strike him, at first using only her fists. Deines said that after hitting him with her fists two or three times, Kettle struck him with metal shears, leaving a wound on his arm. Deines conceded that he did not see Kettle's act of picking up the shears and did not see as she hit him with the shears. However, he maintained that he saw her swinging the shears, whereupon he moved his arm up to block the

strike, and when he lowered his arm he had a wound that he could not have gotten in any other way than by Kettle striking him with the shears.

In addition to Deines's testimony, the prosecution submitted the testimony of two other witnesses. The first, Randa Powers, testified that on the day of the incident she saw Deines exit the vehicle and yell, "Call 911, I have been stabbed." The second, Detective Amy Morgan, testified that during interrogation, Kettle conceded that she had an argument with Deines that escalated into a physical altercation, but Kettle denied that she stabbed him. Kettle told the detective that Deines must have injured himself during the altercation. Detective Morgan also testified that Deines's injury was consistent with a defensive wound and inconsistent with a self-inflicted wound resulting from any accidental conduct by Deines. Kettle chose not to testify. The jury returned a guilty verdict.

Kettle appeals, asserting that the evidence discussed above is insufficient to support the jury's finding of guilt.

II. DISCUSSION

Appellate review of the sufficiency of trial evidence is limited in scope. A jury verdict will not be set aside if it is supported by substantial and competent evidence upon which a rational trier of fact could find the prosecution sustained its burden of proving all elements of the crime beyond a reasonable doubt. *State v. Stefani*, 142 Idaho 698, 704, 132 P.3d 455, 461 (Ct. App. 2005); *State v. Thomas*, 133 Idaho 172, 174, 983 P.2d 245, 247 (Ct. App. 1999). We may not substitute our opinion for that of the jury as to the credibility of witnesses, the weight to be given to the testimony, or the reasonable inferences to be drawn from the evidence. *State v. Knutson*, 121 Idaho 101, 104, 822 P.2d 998, 1001 (Ct. App. 1991); *State v. Gonzalez*, 134 Idaho 907, 909, 12 P.3d 382, 384 (Ct. App. 2000). The facts, and inferences to be drawn from those facts, are construed in favor of upholding the jury's verdict. *State v. Herrera-Brito*, 131 Idaho 383, 385, 957 P.2d 1099, 1101 (Ct. App. 1998); *State v. Peite*, 122 Idaho 809, 823, 839 P.2d 1223, 1237 (Ct. App. 1992).

In this case, Kettle was charged with aggravated battery in violation of Idaho Code §§ 18-903(a), 18-907(1)(b). Therefore, the prosecution was required to prove the following elements: that Kettle willfully and unlawfully used force or violence upon Deines by means of a deadly weapon or instrument. Kettle contends no substantial evidence was introduced from which a

rational jury could find Deines sustained his injuries from Kettle stabbing him with the shears, as opposed to Deines accidentally injuring himself.

Kettle's argument is meritless. Although Deines testified that he did not actually see Kettle in the act of picking up the shears or making physical contact with the shears against his arm, he did see her swinging the shears at him. When he put up his arm to block the strike, he received a stab wound. He further testified that he could not have gotten the wound in any other way. If the jury found Deines credible, it was entirely reasonable for them to infer that Kettle willfully stabbed Deines with the shears, a deadly weapon or instrument. As stated in *Knutson* and *Gonzales*, it is for the jury to determine credibility of witnesses and reasonable inferences. Because the jury could have reasonably inferred all the elements of the offense based on Deines's testimony alone, there was sufficient evidence to support the jury verdict.

Even so, additional evidence also supports the jury verdict. Powers' testimony that immediately after Deines jumped out of the vehicle he shouted he had been stabbed tends to corroborate his testimony. Further, the jury was entitled to credit Detective Morgan's testimony that Deines's wound was consistent with a defense wound and not likely caused by accidental self-infliction. Although there was no blood found on the shears, any blood could have been wiped off, as Detective Morgan suggested in her testimony.

The State's evidence amply supports the jury's guilty verdict. Therefore, the judgment of conviction is affirmed.

Judge GUTIERREZ and Judge GRATTON **CONCUR.**